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*frontier* DEC 30 1998

Michael J. Shortley, III  
Senior Attorney and Director  
Regulatory Services

180 South Clinton Avenue  
Rochester, NY 14646  
716-777-1028  
716-546-7823 fax  
716-777-6105

**FCC MAIL ROOM**

December 28, 1998

mshortle@frontiercorp.com

**BY OVERNIGHT MAIL**

Ms. Magalie Roman Salas  
Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Washington, D.C. 20554

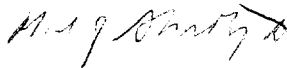
**Re: CC Docket No. 96-128**  
***Ex Parte***

Dear Ms. Salas:

Pursuant to section 1.1206(b)(1) of the Commission's rules, enclosed for filing in the public record are two copies of a written presentation delivered this day to Mr. Lawrence Strickling Chief, Common Carrier Bureau.

If you have any questions, please do not hesitate to contact me.

Very truly yours,



Michael J. Shortley, III

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Mr. Lawrence Strickling  
Chief, Common Carrier Bureau  
Federal Communications Commission  
1919 M Street, N.W., Room 500  
Washington, D.C. 20554

Dear Mr. Strickling:

I am writing on behalf of Frontier Corporation ("Frontier") in response to the *ex parte* letter of November 17, 1998, to you from Michael K. Kellogg on behalf of the RBOC/GTE/SNET Payphone Coalition. In its letter, the Coalition asks the Commission to "confirm" that the interexchange carrier which is the first point of switching is liable for paying per-call compensation unless and until its facilities-based reseller customers actually identify themselves *and* pay per-call compensation. The Commission can "confirm" no such thing because: (a) it would be completely inconsistent with section 276 of the Act; and (b) that is decidedly *not* what the Commission's current payphone compensation regime contemplates.

The Commission cannot confirm the scheme espoused by the Coalition because to do so would be inconsistent with the requirements of section 276. That section requires that compensation be paid to eligible entities on *completed* calls. In the case of switch-based resellers, it is not the carrier that first switches the call that completes it. Rather, it is the last interexchange carrier that actually completes the call. Liability for per-call compensation cannot, under the Act, fall upon the originating carrier.

Indeed, prior Commission attempts to force the larger interexchange carriers to shoulder the entire burden of payphone compensation was rejected by the D.C. Circuit. Under its initial per-line compensation regime, the Commission attempted to limit the compensation burden to interexchange carriers with annual revenues in excess of \$100 million. The District of Columbia Circuit vacated that limitation:

[W]e also find that the FCC acted arbitrarily and capriciously in requiring payments only from large

IXCs -- those with over \$100 million in toll revenue -- for the first phase of the interim plan. The FCC based this decision on concerns of administrative convenience. . . . It is far from clear that the administrative burdens are as heavy as the FCC seems them to be, as each carrier would merely be required to write a check based on its percentage of annual toll revenues. Yet, even assuming, *arguendo*, that the FCC's limitation marginally increases administrative convenience, this limitation comes at a huge cost. For example, if small IXCs were included, they would be required to pay as much as \$4 million per month. . . . Administrative convenience cannot possibly justify an interim plan that exempts all but large IXCs from paying for the costs of services rendered.<sup>1</sup>

The Court's reasoning applies with equal force to the Coalition's request. It is asking that the largest interexchange carriers act as payors -- or, at least, guarantors -- of the obligations of other, unaffiliated, third-party entities. Switch-based resellers' obligations to pay payphone compensation are independent of the obligation that the Act imposes upon facilities-based carriers. In effect, the Coalition is asking -- for the sake of the administrative convenience of its members -- to foist the obligation to pay payphone compensation from an entire industry to a few, "privileged" participants. Such a result would be in irretrievable conflict with the decision of the D.C. Circuit.

Moreover, the Coalition badly misinterprets relevant Commission precedent. In its *Reconsideration Order*, the Commission made clear that the switched-based reseller that actually terminates a compensable call is responsible for the payment of per-call compensation. As the Commission held, "a carrier is required to pay compensation and provide per-call tracking for the calls originated by payphones if the carrier maintains its own switching capability, regardless if the switching equipment is owned or leased by the carrier."<sup>2</sup> The *Commission* decision alone is enough to settle this issue.

Nonetheless, the Coalition cites to ambiguous Bureau language for the proposition that the underlying facilities-based carrier remains on the hook if its resale customer does not pay per-call compensation.<sup>3</sup> However, the Bureau's

<sup>1</sup> *Illinois Public Telecommunications Ass'n v. FCC*, 117 F.3d 555 (D.C. Cir. 1997), 1997 U.S. App. LEXIS 16147 at 28-29.

<sup>2</sup> *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Dkt. 96-128, Order on Reconsideration, 11 FCC Rcd. 21233, ¶ 97 (1996).

<sup>3</sup> Letter at 2-3.

order contradicts -- rather than supports -- the Coalition's position. What the Bureau actually held is as follows:

As clarified in the Order on Reconsideration, switch-based resellers are responsible for paying per-call compensation. When facilities-based IXCs providing 800 service have determined that they are not required to pay compensation on particular 800 number calls because their switched-based resale customers have identified themselves as responsible for paying the compensation, the facilities-based carrier must cooperate with PSPs seeking to bill for resold services. *Thus, a facilities-based carrier must indicate, on request by the billing PSP, whether it is paying per-call compensation for a particular 800 number. If it is not, then it must identify the switch-based reseller responsible for paying payphone compensation for that particular 800 number.*<sup>4</sup>

The relevant Commission and Bureau orders actually contemplate a regime quite different from what the Coalition envisions. Switch-based resellers are responsible for paying compensation for compensable calls that they carry. The underlying, facilities-based carrier need only cooperate with PSPs and must identify particular resellers associated with particular 800 numbers at the request

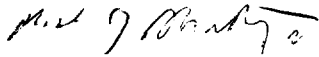
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<sup>4</sup> *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Dkt. 96-128, Memorandum Opinion and Order, 13 FCC Rcd. 10893, ¶ 38 (Com. Car. Bur. 1998) (emphasis added).

of individual PSPs. This is a far cry from the "first switch" approach advocated by the Coalition. In fact, one cannot even find this approach mentioned -- much less adopted -- in relevant Commission or Bureau orders.

Based upon the foregoing, the Bureau should inform the Coalition that its proffered interpretation of the Commission's rules is not what these rules require.

Very truly yours,

A handwritten signature in black ink, appearing to read "Michael J. Shortley, III". The signature is written in a cursive, flowing style.

Michael J. Shortley, III